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November 10, 2014

Executive Secretary
National Labor Relations Board
1099 14th Street, N.W. - Room 11602
Washington, D.C. 20570

Re: Beach Lane Mgt., Inc., and FSM Mgmt., Inc.
Cases 02-CA-037219, 2-CA-037392. 2-CA-038598

This firm represents Bolivar Millet and Manuel Nina, charging parties in the above-referenced matters. Millet and Nina submit this request for review of a decision by the Office of the General Counsel, denying an appeal from a compliance determination of the Regional Director. The General Counsel essentially throws away eleven years of litigation by ignoring already long established facts, and attempts to cover up this capitulation by inventing falsehoods about charging parties. The Board must step in to correct this injustice.

Facts

Millet and Nina are building superintendents employed by respondent, a single employer comprised of Beach Lane Management, Inc., FSM Management, Inc., and Carpe Diem Management LLC. Respondent manages more than 100 residential rental apartment buildings in Manhattan and the Bronx. Beach Lane Mgt., Inc., 357 NLRB No. 30 (2011), at 3, order granted, 505 Fed. Appx. 62 (2d Cir. Dec. 13, 2012). Administrative Law Judge Steven Davis found that respondent had retaliated against Millet and Nina in a variety of ways for their participation in an union organizing drive. Id., at 43. One of those means of retaliation was the denial of "supplemental repair work," or "outside contracting work," work beyond Millet's and Nina's regular duties, consisting of tasks such as painting, installing tiles, sinks, and tubs, and renovations, including the installation of kitchens, bathrooms, and floors. Respondent paid Millet and Nina extra for supplemental repair work.

In 2002, Millet received $24,910 in supplemental repair work. In 2003, when Millet began his union organizing activities, he received $18,150. In 2004, respondent paid Millet $12,970 for supplemental work. Id., at 23. In 2005, Millet earned $75, and the same amount again in 2006. In February 2006, respondent discharged Millet. Id., at 25.

In 2002, Nina earned $63,410 in supplemental repair work. In 2003, he earned $23,970 before respondent learned of Nina's union activities in June 2003, and nothing thereafter. Respondent discharged Nina in November 2003, and even after his reinstatement in 2005, he did no supplemental work. Id., at 29.

The Compliance Stipulation

The above figures indicate that Millet and Nina are each entitled to at least several hundred thousand dollars in lost supplemental repair work. In the Compliance Stipulation, the Regional Director, however, settled for $35,824 for Millet, and $29,536 for Nina. Compliance Stipulation ¶ 5(c)(i)(a) and (d)(i)(a). These numbers would not even constitute one year's worth of lost supplemental repair work for the two men.

The Decision by the Office of General Counsel

The decision by the Office of General Counsel states that the differences between the Regional Director's and charging parties' calculations "are attributable to several factors."

1. The General Counsel states, "The Regional Office invited the individuals to present evidence of discriminatory distribution of supplemental repair work. No evidence was proffered in response." This is a ridiculous lie. Millet and Nina met at least four times with the Compliance Officer, Christen Ritter, who never asked for any evidence at all. Indeed, there would be no need for this particular type of evidence at this stage, since the Board had already found discrimination.The Admininstrative Law Judge spent 15 pages discussing supplemental repair work before concluding that respondent "failed to offer supplemental repair work to [Millet and Nina] in retaliation for their activities on behalf of the Union." Id., at 36.

2. "As to the Regional Office's calculations for Manuel Nina, the Regional Office sought his cooperation as to evidence establishing his availability for work and earnings, but Nina failed to respond and present requested evidence. Therefore, the Regional Office reviewed evidence from passport records that suggested that he was not in the country for substantial time periods." This allegation borrows from an employer defense which was rejected by the ALJ. Id., at 42. On several occasions, Nina left the country for periods that never lasted for more than several weeks. He was always available for work, and over the course of this litigation responded to every request for evidence from the Counsel to the General Counsel, Burt Pearlstone. As stated above, no requests were made by Ms. Ritter. Notwithstanding the somewhat chilling reference to personal travel records from another Federal agency, Nina should not forfeit hundreds of thousands of dollars of make-whole relief because he went on vacation.

3. "The Regional Office also determined that documentary evidence established that available work in the buildings declined. The superintendents often used helpers, rather than performing the work themselves." This issue was specifically discussed by the Administrative Law Judge, who wrote, "Historically, the superintendents were permitted to employ helpers, or

porters, at the superintendents' own expense to assist them with repairs in the buildings or to help them when they performed supplemental repair work." Id., at 11. The use of helpers was certainly not a new development after charging parties' dismissal.

It appears as if Millet and Nina have wasted over a decade of cooperation with the National Labor Relations Board. Their reward is to have the Board snooping in Homeland Security records to support employer arguments rejected years ago. The Board has already found that these men are entitled to full relief. Throwing in the towel at this late date is, to say the least, disheartening.

For all of the above reasons, charging parties Bolivar Millet and Manuel Nina respectfully request that the Compliance Stipulation be vacated, and the matter returned to the Regional Director for further proceedings.

Very truly yours,

Stuart Lichten

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